

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BERNABE ENCARNACION,

Plaintiff,

v.

9:18-CV-0704
(TJM/DJS)

ANTHONY ANNUCCI, et al.,

Defendants.

APPEARANCES:

BERNABE ENCARNACION
91-B-0943
Plaintiff, pro se
Attica Correctional Facility
Box 149
Attica, NY 14011

THOMAS J. MCAVOY
Senior United States District Judge

DECISION and ORDER

Plaintiff Bernabe Encarnacion commenced this action in June, 2018, by filing a pro se civil rights complaint together with an application for leave to proceed in forma pauperis. Dkt. No. 1 ("Compl."); Dkt. No. 2 ("IFP Application"). By Decision and Order of this Court filed July 23, 2018, plaintiff's IFP Application was granted, but following review of the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b), the Court found that the complaint was subject to dismissal for failure to state a claim upon which relief may be granted. Dkt. No. 4 (the "July 2018 Order"). In light of his pro se status, plaintiff was afforded an opportunity to submit an amended complaint. *Id.* Plaintiff was specifically

advised that his failure to comply with the July 2018 Order within thirty days of the filing date thereof would result in dismissal of this action. *Id.* at 17-18.

Prior to the expiration of the 30-day deadline, plaintiff submitted a letter motion requesting a 90-day extension of time to file an amend complaint. Dkt. No. 5. By Order dated August 3, 2018, plaintiff's letter motion was granted. Dkt. No. 6. Plaintiff was advised that if he failed to file a signed amended complaint on or before November 13, 2018 pursuant to the July 2018 Order, a judgment would be entered indicating that this action is dismissed without prejudice due to plaintiff's failure to state a claim upon which relief can be granted and to comply with the July 2018 Order. *Id.*

On or about November 11, 2018, plaintiff filed another letter motion requesting an additional extension of time to file an amended complaint. Dkt. No. 9. By Order dated November 19, 2018, plaintiff was granted an extension of time until January 18, 2019 to submit an amended complaint in compliance with the July 2018 Order. Dkt. No. 10 (the "November 2018 Order"). Plaintiff was advised that his failure to file a signed amended complaint on or before January 18, 2019 pursuant to the July 2018 Order would result in the dismissal of this action. *Id.* Plaintiff was further advised that no further extensions would be granted in the absence of a showing of good cause. *Id.*

Plaintiff's deadline to submit an amended complaint in accordance with the November 2018 Order has lapsed, and plaintiff has not submitted an amended complaint or sought a further extension of time. Plaintiff's failure to submit an amended complaint as directed in the November 2018 Order requires dismissal of this action.

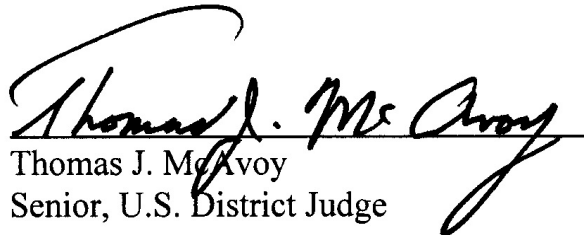
WHEREFORE, it is hereby

ORDERED that this action is **DISMISSED without prejudice** due to plaintiff's failure to submit an amended complaint as directed in the November 2018 Order. The Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the Clerk serve a copy of this Decision and Order on plaintiff.

IT IS SO ORDERED.

Dated: January 30, 2019


Thomas J. McAvoy
Senior, U.S. District Judge